

Small Business Teaming Arrangements



Devon E. Hewitt
Partner, Protorae Law PLLC
8075 Leesburg Pike, Suite 760
Tysons, VA 22182
703.942.6746

PROTORÆ LAW_{PLLC}

dhewitt@protoraelaw.com

Types of (Federal) Teaming Arrangements

- Prime/Sub Teaming
- Joint Ventures
- Contract Teaming Arrangements (GSA)
 - “Affiliation” always a concern with respect to teaming for a small business set aside

Comparison

Prime/Sub Team

- Independent Contractors
- Ostensible Subcontractor Rule
- Prime has privity of contract w/ govt.
- Difficult to ensure workshare
 - ✓ Prime usually has broad termination rights
- Past Performance unequal
- No SBA approval required

Joint Venture

- Separate Legal Entity
 - ✓ Populated/Unpopulated
- Special Purpose Entity
 - ✓ 3 in 2 rule
- Presumption of Affiliation
 - ✓ exceptions
- Past Performance Equal
- All Members have privity
- SBA approval may be required
- Expensive
- Difficult to exit
- May have joint and several liability
- Difficult to speak with one voice

JV Affiliation Exceptions

- JV with all small business members
 - All members must be “small” under relevant NAICS code/size standard and
 - If size standard is employee based, value of procurement is greater than \$10 million
 - If size standard is revenue based, value is greater than 1/2 the applicable size standard
- 8(a) Mentor- Protégé JV
 - Must have SBA approved Mentor-Protégé Agreement
 - JV agreement must conform to regulations
 - JV agreement must be approved by SBA

Looking to the Future

- FAR 52.219-14, Limitations on Subcontracting
 - 50% cost of personnel incurred for contract performance must be performed by prime
 - Will change to 50% of amount *paid* prime contractor
 - New rule for “similarly situated” entities
- New rule for small business JVs
- No populated JVs allowed
- Extension of M/P Program to all small businesses



Small Business M&A Issues

- Valuation
- Recertification requirements
- Novation requirements